

accordance with paragraph (d)(3) of this section, you may also provide waivers in accordance with paragraphs (d)(1) and (d)(2) of this section pursuant to your approved schedule.

(5) If you do not have an approved schedule for phasing in permit coverage, you must make a determination whether to issue an NPDES permit or allow a waiver in accordance with paragraph (d)(1) or (d)(2) of this section, for each eligible MS4 by December 9, 2002.

(6) You must periodically review any waivers granted in accordance with paragraph (d)(2) of this section to determine whether any of the information required for granting the waiver has changed. At a minimum, you must conduct such a review once every five years. In addition, you must consider any petition to review any waiver when the petitioner provides evidence that the information required for granting the waiver has substantially changed.

(e) You must specify a time period of up to 5 years from the date of permit issuance for operators of regulated small MS4s to fully develop and implement their storm water program.

(f) You must include the requirements in §§ 122.33 through 122.35 of this chapter in any permit issued for regulated small MS4s or develop permit limits based on a permit application submitted by a regulated small MS4. (You may include conditions in a regulated small MS4 NPDES permit that direct the MS4 to follow an existing qualifying local program's requirements, as a way of complying with some or all of the requirements in § 122.34(b) of this chapter. See § 122.34(c) of this chapter. Qualifying local, State or Tribal program requirements must impose, at a minimum, the relevant requirements of § 122.34(b) of this chapter.)

(g) If you issue a general permit to authorize storm water discharges from small MS4s, you must make available a menu of BMPs to assist regulated small MS4s in the design and implementation of municipal storm water management programs to implement the minimum measures specified in § 122.34(b) of this chapter. EPA plans to develop a menu of BMPs that will apply in each State or Tribe that has

not developed its own menu. Regardless of whether a menu of BMPs has been developed by EPA, EPA encourages State and Tribal permitting authorities to develop a menu of BMPs that is appropriate for local conditions. EPA also intends to provide guidance on developing BMPs and measurable goals and modify, update, and supplement such guidance based on the assessments of the NPDES MS4 storm water program and research to be conducted over the next thirteen years.

(h)(1) You must incorporate any additional measures necessary to ensure effective implementation of your State or Tribal storm water program for regulated small MS4s.

(2) Guidance: EPA recommends consideration of the following:

(i) You are encouraged to use a general permit for regulated small MS4s;

(ii) To the extent that your State or Tribe administers a dedicated funding source, you should play an active role in providing financial assistance to operators of regulated small MS4s;

(iii) You should support local programs by providing technical and programmatic assistance, conducting research projects, performing watershed monitoring, and providing adequate legal authority at the local level;

(iv) You are encouraged to coordinate and utilize the data collected under several programs including water quality management programs, TMDL programs, and water quality monitoring programs;

(v) Where appropriate, you may recognize existing responsibilities among governmental entities for the control measures in an NPDES small MS4 permit (see § 122.35(b) of this chapter); and

(vi) You are encouraged to provide a brief (e.g., two page) reporting format to facilitate compiling and analyzing data from submitted reports under § 122.34(g)(3) of this chapter. EPA intends to develop a model form for this purpose.

[64 FR 68850, Dec. 8, 1999]

§ 123.36 Establishment of technical standards for concentrated animal feeding operations.

If the State has not already established technical standards for nutrient management that are consistent with

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40 CFR 412.4(c)(2), the Director shall establish such standards by the date specified in § 123.62(e).

[68 FR 7269, Feb. 12, 2003]

Subpart C—Transfer of Information and Permit Review

§ 123.41 Sharing of information.

(a) Any information obtained or used in the administration of a State program shall be available to EPA upon request without restriction. If the information has been submitted to the State under a claim of confidentiality, the State must submit that claim to EPA when providing information under this section. Any information obtained from a State and subject to a claim of confidentiality will be treated in accordance with the regulations in 40 CFR part 2. If EPA obtains from a State information that is not claimed to be confidential, EPA may make that information available to the public without further notice.

(b) EPA shall furnish to States with approved programs the information in its files not submitted under a claim of confidentiality which the State needs to implement its approved program. EPA shall furnish to States with approved programs information submitted to EPA under a claim of confidentiality, which the State needs to implement its approved program, subject to the conditions in 40 CFR part 2.

§ 123.42 Receipt and use of Federal information.

Upon approving a State permit program, EPA will send to the State agency administering the permit program any relevant information which was collected by EPA. The Memorandum of Agreement under § 123.24 (or, in the case of a sewage sludge management program, § 501.14 of this chapter) will provide for the following, in such manner as the State Director and the Regional Administrator agree:

(a) Prompt transmission to the State Director from the Regional Administrator of copies of any pending permit applications or any other relevant information collected before the approval of the State permit program and not already in the possession of the State

Director. When existing permits are transferred to the State Director (e.g., for purposes of compliance monitoring, enforcement or reissuance), relevant information includes support files for permit issuance, compliance reports and records of enforcement actions.

(b) Procedures to ensure that the State Director will not issue a permit on the basis of any application received from the Regional Administrator which the Regional Administrator identifies as incomplete or otherwise deficient until the State Director receives information sufficient to correct the deficiency.

[48 FR 14178, Apr. 1, 1983, as amended at 63 FR 45122, Aug. 24, 1998]

§ 123.43 Transmission of information to EPA.

(a) Each State agency administering a permit program shall transmit to the Regional Administrator copies of permit program forms and any other relevant information to the extent and in the manner agreed to by the State Director and Regional Administrator in the Memorandum of Agreement and not inconsistent with this part. Proposed permits shall be prepared by State agencies unless agreement to the contrary has been reached under § 123.44(j). The Memorandum of Agreement shall provide for the following:

(1) Prompt transmission to the Regional Administrator of a copy of all complete permit applications received by the State Director, except those for which permit review has been waived under § 123.24(d). The State shall supply EPA with copies of permit applications for which permit review has been waived whenever requested by EPA;

(2) Prompt transmission to the Regional Administrator of notice of every action taken by the State agency related to the consideration of any permit application or general permit, including a copy of each proposed or draft permit and any conditions, requirements, or documents which are related to the proposed or draft permit or which affect the authorization of the proposed permit, except those for which permit review has been waived under § 123.24(d). The State shall supply EPA with copies of notices for which